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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

APL CO. PTE. LTD.,

Plaintiff,

v.

KEMIRA WATER SOLUTIONS, INC.,  
(formerly known as "Kemiron Companies"),  
FAIRYLAND ENVITECH CO. LTD.,

Defendants.

Case No.

**COMPLAINT**

Plaintiff alleges:

**PARTIES AND JURISDICTION**

1. This is an admiralty and maritime claim under 28 U.S.C. § 1333 and Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff also claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq. Plaintiff's CERCLA claims are also within the Court's federal question under 28 U.S.C. § 1331.

3. Plaintiff's claims are all so related to each other that they form part of the same case or controversy under Article III of the U.S. Constitution. Thus, to the extent, if any, plaintiff's claims fall outside admiralty or federal

question jurisdiction, they are within the Court's supplemental jurisdiction under 28 U.S.C. § 1367(a).

4. Plaintiff, APL Co. Pte. Ltd., is a Singapore corporation with its principal place of business in Singapore. Plaintiff is qualified to do business in California and maintains an office and place of business in Oakland, California.

5. Defendant, Kemira Water Solutions, Inc. ("Kemira") was formerly named "Kemiron Companies," and is, upon information and belief, a Delaware corporation with its principal place of business in Florida.

6. Defendant, Fairyland Envitech Co. Ltd. ("Fairyland") is, upon information and belief, a company organized under the laws of a foreign nation with its principal place of business in Taiwan, Republic of China.

## CLAIM FOR RELIEF

7. Fairyland tendered to plaintiff two cargoes (the "Goods") of ferrous chloride in Taiwan for shipment to California. The ferrous chloride was in bags which Fairyland packed or caused to be packed into ocean cargo containers.

8. Plaintiff, as "Carrier," issued two straight bills of lading (the "Bills of Lading") to Fairyland, as "Shipper," and to Kemira, as "Consignee," of the Goods.

9. The first Bill of Lading, No. APLU451382861 issued September 30, 2006, covered 412 bags containing ferrous chloride crystal (the "First Shipment"), which plaintiff loaded aboard the HYUNDAI INDEPENDENCE in Kaohsiung, Taiwan.

10. The second Bill of Lading, No. APLU401403279 issued October 17, 2006 covered 530 bags containing ferrous chloride crystal (the "Second Shipment"), which plaintiff loaded aboard the APL SINGAPORE in Kaohsiung, Taiwan.

11. Under the terms of the Bills of Lading, plaintiff contracted to and did in fact carry the Goods from Taiwan to California.

1           12. At the time of tender to plaintiff, the Goods were in ocean-cargo  
2 containers. These were "Shipper-Packed Containers" under Clause 9 of each Bill of  
3 Lading.

4           13. Clause 1 of each Bill of Lading defines "Merchant" to include  
5 "the Shipper, Consignee, Receiver, Holder of the Bill of Lading, Owner of the cargo  
6 or Person entitled to the possession of the cargo or having a present or future interest  
7 in the Goods," and states that "all . . . shall be jointly and severally liable to the  
8 Carrier . . . for the performance of the obligations of any of them under this Bill of  
9 Lading."

10           14. Each defendant was, at some point before, at or after tender of  
11 the Goods to plaintiff for carriage, one or more of the following: (a) shipper; (b)  
12 consignee; (c) receiver; (d) holder of the bill of lading; (e) owner of the Goods; (f)  
13 person entitled to possession; or (g) holder of a present or future interest in the  
14 Goods.

15           15. Upon information and belief, each defendant accepted the terms  
16 of the Bills of Lading. The allegations this paragraph contains are likely to have  
17 further evidentiary support after a reasonable opportunity for further investigation or  
18 discovery.

19           16. Upon information and belief, Kemira contracted to purchase the  
20 Goods from Fairyland and expressly or impliedly authorized Fairyland to bind  
21 Kemira to the terms of the Bills of Lading.

22           17. Each defendant is a "Merchant" under the Bills of Lading.

23           18. Upon the First Shipment's arrival in California aboard the  
24 HYUNDAI INDEPENDENCE, plaintiff discovered the containers that contained  
25 the Goods were leaking and hazardous.

26           19. Plaintiff notified the master of the APL SINGAPORE of the  
27 condition of the First Shipment and requested he inspect the Second Shipment, then  
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1 aboard his ship en route from Taiwan to California. Upon inspection, the master  
2 determined the Second Shipment also to be leaking and hazardous.

3 20. Plaintiff expended funds containing, assessing, cleaning, and  
4 removing the Goods.

5 21. Clause 19 of the Bill of Lading states "[n]o Goods which are or  
6 may become inflammable, explosive, corrosive, noxious, hazardous, dangerous or  
7 damaging. . . or which are or may become liable to damage any property  
8 whatsoever, shall be tendered to the Carrier for Carriage without its express consent  
9 in writing . . . ." By that Clause defendants also undertook that the Goods were  
10 "packed in a manner adequate to withstand the risk of Carriage having regard to  
11 their nature and in compliance with all laws or regulations which may be applicable  
12 during Carriage and handling." The Clause further obligates defendants to  
13 indemnify plaintiff when it states, "[w]hether or not the Merchant was aware of the  
14 nature of the Goods, the Merchant shall indemnify the Carrier against all claims,  
15 losses, damages, liabilities or expenses arising in consequence of the Carriage of  
16 such Goods."

17 22. Defendants breached Clauses 9 and 19 of the Bill of Lading and  
18 are jointly and severally liable for all plaintiff's resulting damages and expenses.  
19 Defendants are obligated to pay plaintiff's damages as a result of the indemnity  
20 obligations they undertook by agreeing to those Clauses.

21 23. Defendants shipped hazardous Goods, failed properly to stow the  
22 Goods in the ocean cargo containers, and failed to provide notice to APL as required  
23 by law, all of which constituted negligence on defendants' part.

24 24. Plaintiff incurred response costs as a result of the leaking of  
25 hazardous materials from the bags that contained the Goods. Each bag in which  
26 Fairyland packed the Goods was a "facility" within the meaning of 42 U.S.C.  
27 § 9607(a)(1). Upon information and belief, defendants each owned, operated or  
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1 controlled the facilities from which leakage occurred. Defendants are therefore  
2 liable under CERCLA to contribute to plaintiff for its response costs.

3 25. Plaintiff's damages exceed US\$5 million.

4 **PRAYER**

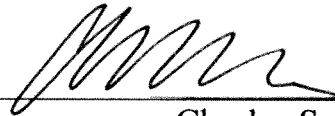
5 Plaintiff prays for judgment against defendants jointly and severally  
6 for:

- 7 (a) damages in excess of US\$5 million;  
8 (b) interest, costs and attorneys' fees; and  
9 (c) other and further relief in plaintiff's favor as the Court  
10 deems just.

11 DATED: August 27, 2009.

12 SHEPPARD MULLIN RICHTER & HAMPTON LLP

13  
14 By



15 Charles S. Donovan

16 Attorneys for Plaintiff, APL Co. Pte. Ltd.  
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